

1 MARK F. HAZELWOOD, # 136521
 2 DIRK D. LARSEN, # 246028
 3 LOW, BALL & LYNCH
 4 505 Montgomery Street, 7th Floor
 5 San Francisco, California 94111-2584
 Telephone: (415) 981-6630
 Facsimile: (415) 982-1634
 Email: mhazelwood@lowball.com
dlarsen@lowball.com

6 Attorneys for Defendants
 7 SILICON VALLEY ANIMAL CONTROL
 AUTHORITY, AL DAVIS, ANTJE MORRIS
 AND CITY OF CAMPBELL

8
 9 UNITED STATES DISTRICT COURT10 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE
 11

12 LEE JACKSON and KENNETH JACKSON,) Case No. C07 05667 RS
 13 Plaintiffs,) DECLARATION OF ALBERT
 14 v.) DAVIS IN SUPPORT OF
 15 SILICON VALLEY ANIMAL CONTROL) DEFENDANTS SILICON
 AUTHORITY, CITY OF SANTA CLARA, CITY) VALLEY ANIMAL CONTROL
 16 OF CAMPBELL, HUMANE SOCIETY SILICON) AUTHORITY, AL DAVIS, ANTJE
 VALLEY DOES 1 TO 20,) MORRIS AND CITY OF
 17 Defendants.) CAMPBELL'S MOTION FOR
 18) SUMMARY JUDGMENT, OR IN
) THE ALTERNATIVE, PARTIAL
) SUMMARY JUDGMENT

19 Date: September 3, 2008
 20 Time: 9:30 a.m.
 Courtroom: 4, 5th Floor
 21 Judge: Hon. Richard
 Seeborg

22 I, ALBERT DAVIS, declare as follows:

23 1. I have personal knowledge of the following facts, and could and would testify
 24 competently thereto if called upon to do so.
 25 2. I am currently employed as Field Services Manager with the Silicon Valley Animal
 26 Control Authority ("SVACA"). I have held this position since 2005. From 2002 to 2005, I was
 27 employed as Field Services Supervisor with SVACA. I held the position of Senior Animal Control
 28 Officer with SVACA from July 1, 2001 to 2002. Prior to that, I was employed by South Bay Animal

1 Control Services in the following positions: Captain (2000-2001); Sergeant (1999-2000); Animal
2 Control Officer (1997-1999); Dispatcher (1996-1997). My education and training in the field of animal
3 safety, health and protection consists of: California State Humane Academy Certificate (1998); Laws of
4 Arrest, Search and Seizure, Penal Code § 832 Certificate (1998); Illegal Animal Fighting Certificate
5 (1998); Supervisor's School Certificate (2000); Level I Animal Cruelty Investigator's School Certificate
6 (2002); various animal control and care seminars (1997-present). I am familiar with SVACA's policies,
7 procedures and practices for creating and retaining reports and other records of its activities, including
8 investigations and seizures. I am also familiar with SVACA Policies and Penal Code § 597.1's
9 requirements for providing Notice of Seizure of Animals and Declaration of Ownership or Right to Keep
10 Animal to the owner of any animal(s) seized pursuant to Penal Code § 597.1(a).

11 3. On December 19, 2005, at approximately 1:30 p.m., I received a call made to SVACA
12 from a concerned citizen. This citizen reported that approximately four to five dogs and two to three
13 cats were being kept in a beige/brown Bounder motor home parked at a Mervyn's parking lot at the
14 corner of El Camino Real and Scott in Santa Clara, California. The concerned citizen reported that
15 animals and people in the motor home were in bad health, that one dog possibly had a broken jaw, and
16 that the owner's first name was Lee. A true and correct copy of the SVACA activity card recording this
17 call is attached hereto as Exhibit A and incorporated by this reference.

18 4. Officer Morris responded to the scene immediately, and I responded to the scene within
19 an hour. Approximately three City of Santa Clara Police Officers arrived roughly the same time as I did.
20 Based on Officer Morris's description of the condition of the animals inside the motor home, Officer
21 Morris and I made the decision to seize the animals immediately pursuant to Penal Code § 597.1(a) in
22 order to protect their health and safety.

23 5. Following the seizure of the animals being kept by plaintiffs Lee Jackson and Kenneth
24 Jackson ("Plaintiffs") in the motor home, I provided Plaintiffs with a Notice of Seizure of Animal(s) and
25 Declaration of Ownership or Right to Keep Animal, both properly completed pursuant to Penal Code
26 § 597.1. A true and correct copy of this Notice and Declaration is attached hereto as Exhibit B and
27 incorporated by this reference.

28 6. Plaintiffs requested a post-seizure hearing to determine the lawfulness of the animals'

1 seizure, and on December 21, 2005, I provided Plaintiffs with a letter in which I notified them that the
2 hearing would take place at SVACA's offices at 9:00 a.m. on December 22, 2005. A true and correct
3 copy of this December 21, 2005 letter is attached hereto as Exhibit C and incorporated by this reference.

4 7. Following the hearing of December 22, 2005, I furnished Plaintiffs with a letter in which
5 I informed them that they had violated Penal Code § 597.1 by failing to provide proper care for the
6 animals, and that they had also violated Santa Clara's vaccination, licensing and animal-limit
7 ordinances. In the letter, I advised Plaintiffs that SVACA would consider returning "Justice," a neutered
8 black Labrador mix, if Plaintiffs paid the required boarding, veterinary and impound fees, and
9 demonstrated to SVACA that they could provide the necessary care by January 5, 2006. A true and
10 correct copy of the letter of December 22, 2005 is attached hereto as Exhibit D and incorporated by this
11 reference.

12 8. On January 5, 2006, SVACA Director Dan Soszynski, a representative of the Santa Clara
13 District Attorney's office and I met with Plaintiffs and inspected their motor home. Mr. Soszynski and I
14 determined that Plaintiffs had not cleaned their motor home sufficiently and had not demonstrated the
15 ability to provide proper care for Justice.

16 I swear under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct to the best of my own personal knowledge.

19 Executed this 30th day of July, 2008, in Santa Clara, California.

Albert Davis
ALBERT DAVIS

EXHIBIT A

A05-025973-1 INV/HUM

Priority Level: 3

Total Animals: 21 Animal Type: DOG

Activity Address: EL CAMINO REAL

Activity Comment: /SCOTT - TOTAL OF APPROX 4-5 DOGS AND 2-3 CATS IN A MOTOR HOME - SEE MEMO

Caller Information:

CONCERNED CITIZEN

0

CA

A492233

Officer: P999006 MORRIS Clerk: ADAVIS

Call Date: 12/19/05 01:30 PM

New Date: 12/19/05 01:30 PM

Dispatch Date: 12/19/05 01:54 PM

Working Date: 12/19/05 02:02 PM

Complete Date: 12/19/05 04:28 PM

Result Codes:

21 IMPND

1 WSC

memo:

12/19/05 Motor home is a beige/brown Bounder parked in Mervyn's plaza parking lot. Lic # 3SIM113. Husband works at Safeway at Rivermark so she sometimes is parked on Agnew near there. Animals and people in bad health. One dog possibly had a broken jaw at one time. Owners first name is Lee. ADavisH3

12/19/05 I called Campbell dispatch for registered owner information on the vehicle. The vehicle is registered to George and Phyllis GONSALES at the address of 9664 Betabel Road in San Juan Bautista, CA 95045. AMH6

12-21-05 WS received from Barbara Jean Mizrahi-Shalom. KManning

EXHIBIT B



Silicon Valley Animal Control Authority
 2324 Walsh Avenue
 Santa Clara, CA 95051
 Tel. (408) 764-0344 Fax. (408) 988-5411

**NOTICE
SEIZURE OF ANIMAL(S)**

Date 7/30/08 Time 4:15 PM Case # 505-02523

Under the authority of Penal Code Section 597.1, the animal(s) described below was/were seized in violation of the following:

Code Sections: California Penal Code 597(b)

Item: Verizon Plaza Parking Lot - El Camino Real

Address/Location: Santa Clara Ctr

City: El Camino Real

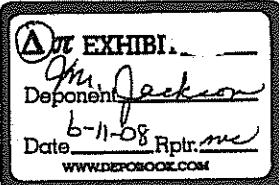
Zip: 95050

Animal(s)/ID: 15 adult cats

Circumstances: Unsanitary living condition inside

Mobile home, too many animals

icer: A. Morris Hle Extension: 764-0344



Silicon Valley Animal Control Authority
 Tel. (408) 764-0344

Declaration of Ownership or Right to Keep Animal

I am the Owner *Please make this hearing as simple as possible*
 I am the Person Authorized to Keep the Animal *Save my animals and my lease me*
 I am the Agent of the Owner
 I am the Agent of the Person Authorized to Keep the Animal

I hereby request that you schedule a pre-seizure/post-seizure hearing.

This declaration must be returned to SVACA by 12/29/08 5:00 PM (Time)

or 12/29/08 unless you wish to waive your right to a hearing.

Signature Lee Jackson Print Name Lee Jackson KEN JACKSON

Address PO Box 458 Gilroy CA 95021

Hm. Phone 408-632-1311 Wk. Phone we don't pick up calls
Please notify us of date by phone we don't pay for gas
or mail by regular mail

Statement: The owner or person authorized to keep the animal(s) or his/her agent may request a post seizure hearing by returning the enclosed declaration within ten days, including holidays/weekends, of the Notice date. Return the declaration by personal delivery or mail.

Statement: Costs for care/treatment of animal(s) properly seized are liens against the animal(s). No animal will be returned until liens are paid. Failure to request or attend a scheduled hearing shall result in liability for the costs.

EXHIBIT C



Serving
Campbell
Monte Sereno
Santa Clara

December 21, 2005

Mr. & Mrs. Kenneth Jackson
P.O. Box 958
Gilroy, CA 95021

Re: Summary seizure and post-seizure hearing
Date: December 22, 2005
Time: 9:00 am

Dear Mr. & Mrs. Jackson:

The hearing has been set for the above-referenced date and time and will be held at the Silicon Valley Animal Control Authority office, 2324 Walsh Ave., Santa Clara, CA 95051. Please check in at the front counter.

Sincerely,

Albert J. Davis
Field Services Manager

cc: City of Santa Clara, City Attorney's Office
Captain Russ Patterson, Campbell Police, Hearing Officer

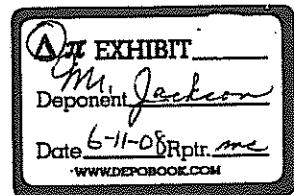
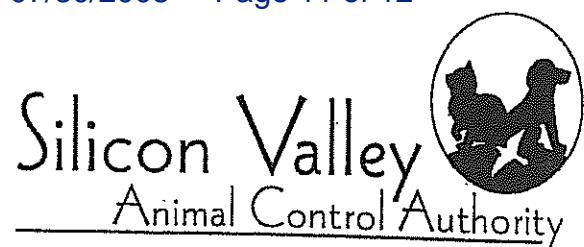


EXHIBIT D



December 22, 2005

Serving
Campbell
Monte Sereno
Santa Clara

Mr. & Mrs. Kenneth Jackson
P.O. Box 958
Gilroy, CA 95021

Dear Mr. & Mrs. Jackson:

This is in regard to your animals that were lawfully seized from your vehicle on December 19, 2005. The animals were suffering unnecessarily from a lack of proper air, veterinary care, and proper space. This neglect of animals violates California anti-cruelty laws.

Please be advised that as an animal owner in the State of California, you are required to provide animals with proper food, drink, shelter, and to protect them from needless suffering or unnecessary cruelty. Failure to provide such care is a violation of Penal Code 597(b) of the California Penal Code, entitled "Crimes Against Animals," and is punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars (\$20,000).

You were also in violation of the City of Santa Clara animal ordinances as your dogs were not vaccinated and licensed. You also violated the "over-the-limit" animal ordinance.

SVACA will consider returning "Justice" a neutered, black Labrador mix to you if you correct the violations of law. Specifically, you must pay all required fees and demonstrate to the satisfaction of SVACA that you can and will provide the necessary care required by 5:00pm Thursday January 5, 2006. Failure to do so will result in "Justice" and all animals being deemed abandoned and therefore disposed of by SVACA. Please contact SVACA when you are ready for a reinspection.

In order to provide necessary care you must do the following:

1. Provide proper food:
 - a. Provide proper, wholesome food. Your dog should be fed daily with the correct quantity (refer to your veterinarian's recommendation – or table on the back of the dog food bag);
 - b. Provide proper food in a clean, adequately sized container;
 - c. Two 50 lb. bags must be available upon reinspection.
2. Provide proper water:
 - a. Provide a large, sturdy water container to ensure your dog has access to water at all times.

3. Provide proper air and space:
 - a. Remove all waste matter causing odor. Clean the vehicle thoroughly and maintain in a clean and healthy manner.
 - b. Provide proper space and confinement. Chaining is not an acceptable form of confinement as it can cause unnecessary suffering. Allow the dog to roam loose in the vehicle when not in motion and house in a properly sized crate when the vehicle is in motion.
 - c. You must also properly exercise your dog. It is recommended that the dog be properly exercised (walked on leash for an extended period or exercised in a dog friendly area such as a dog park) at least twice a day.
4. Collars:
 - a. Provide a properly fitted collar to prevent your dog from injury and unnecessary suffering. The existing collar (choke chain) is a training device and not intended for everyday use.
5. Veterinary Care:
 - a. Provide proper veterinary care and follow all recommendations of a veterinarian.
6. You will allow SVACA to inspect your vehicle and new premises for compliance at any time.
7. You will not violate the "over-the-limit" animal ordinance. It is strongly recommended that you own only one animal until you have a permanent address and can therefore provide proper care for more than one animal.

In addition, you will be required to pay all SVACA fees. As of today, fees owed total \$2,603.00.00 and will continue to accrue at a rate of \$299.00 per day. You must also reimburse the Humane Society for any and all veterinary expenses incurred in caring for your animals.

If you are unable to pay the required fees and/or provide the necessary care required, it is recommended that you surrender your animal as soon as possible to SVACA.

Please contact me at 764-0344 if you have any questions.

Sincerely,



Albert J. Davis
Field Services Manager